

Public Agenda Item: **Yes**

Title: **Shoals Café on the Lido, Berry Head Road, Brixham**

Wards Affected: **St Peter's with St Mary's**

To: **Licensing Sub-Committee**

On: **6 August 2020**

Contact Officer: **Mandy Guy**

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1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a Variation to a Premises Licence.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objectives “The Prevention of Crime and Disorder”, “The Prevention of Public Nuisance” and “Public Safety”.
- 1.4 The matter must be considered on its own merits having received details of the issues arising either at a hearing or by written Representations if all parties have agreed that a hearing is not necessary. Having regard to the Representations and issues arising, a decision must be made to take such steps as are appropriate for the promotion of the licensing objectives. These are:-
 - (a) to modify the conditions of the licence, or
 - (b) reject the application in whole or in part, or
 - (c) to grant the application as applied for

For this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Interested Parties and Responsible Authorities at the determination of the matter.

2. Introduction

- 2.1 An application has been made under Section 34 of the Licensing Act 2003 (hereinafter referred to as 'the Act') for a Variation to a Premises Licence. Details of the application are shown in Appendix 1. Only the relevant pages of the application are shown.

A brief description of the proposed Variation is as follows:-

To allow the Sale of Alcohol for consumption off the premises from 11:00am until 11:00pm seven days a week.

The premises is currently licensed for the Sale of Alcohol on the premises from 11:00am until 11:00pm seven days a week.

The Applicant has proposed three new conditions shown in section 16 of the application. These are in relation to the Licensing Objective the Prevention of Public Nuisance.

1. All drinks will be served in environmentally friendly containers to ensure no glass bottles are taken from the premises.
2. Adequate waste bins to be provided for customers and regular checks will be carried out by staff to ensure any litter left behind by customers will be cleared and disposed of responsibly.
3. The outside area shall be regularly monitored by staff.

The Applicant has written the following description of the proposed variation which is shown in section 3 of the application form:-

"Shoals Café is a restaurant with indoor seating for approximately 22 people and outdoor seating for approximately 20 people. Shoals is situated 3 metres away from an old putting green, behind Berry Head Road which is included in our lease and forms part of our overall premises. The proposed variation is to provide off sales to takeaway or consume on the green".

- 2.2 A copy of the current premises licence showing the licensable activities, timings and conditions is shown at Appendix 2 of this report. A copy of the plan from the licence is shown at Appendix 3.

The exemptions under the Live Music Act 2012 apply to this licence.

- 2.3 Torbay Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 35(1) of the Act but is unable to issue the Variation to the Premises Licence, as a relevant Representation has been received from an Interested Party. The Licensing Authority is also satisfied that the Representation was received within the appropriate time-scale, has not been subsequently withdrawn and is not vexatious or frivolous.

We have accepted a Representation from an Interested Party who is objecting to this application. The Representation relates to the Licensing Objectives "The Prevention of Crime and Disorder", "The Prevention of Public Nuisance" and "Public Safety". This is shown as Appendix 4.

There have been no Representations received from any Responsible Authority or any other Interested Party other than the one mentioned above.

- 2.4 The Licensing Authority is required to conduct a hearing by the provisions of Section 35(3) unless all parties agree that this is not necessary.
- 2.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.
- 2.6 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 2.7 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 4(2) of Schedule 5 to :-
- (a) The applicant for the variation of the licence against any decision to modify the conditions
 - (b) Any person who made a relevant representation in relation to the application who desires to contend
 - (i) that any variation made ought not to have been made, or
 - (ii) that, when varying the licence, the Licensing Authority ought to have modified the conditions of the licence or ought to have modified them in a different way.
- 2.8 Following such Appeal, the Magistrates' Court may:-
- (a) dismiss the appeal,
 - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
 - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
- and may make such order as to costs as it thinks fit.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1	Relevant sections of the application form.
Appendix 2	Copy of the Premises Licence and Plan.
Appendix 3	Copy of the plan from the licence.
Appendix 4	Representations from an Interested Party.

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

The current Premises Licence for the above Premise.

Torbay Council Licensing Policy 2016-2021.